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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/624,550	07/23/2003	Kenji Ishiguro	4670-0101P	7488

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EXAMINER

BOGART, MICHAEL G

ART UNIT	PAPER NUMBER
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3761

DATE MAILED: 08/11/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/624,550

Applicant(s)

ISHIGURO ET AL.

Examiner

Michael G. Bogart

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 November 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 July 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☒ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 12 October 2004.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Priority

Acknowledgment is made of applicant's claim for foreign priority based on an application filed in Japan on 23 July 2002. It is noted, however, that applicant has not filed a certified copy of the JP 2002-213763 application as required by 35 U.S.C. § 119(b).

Specification

The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed. It is suggested that one or more features that distinguish the claimed invention over generic disposable diapers be incorporated into the title.

Claim Objections

Claims 1 is objected to because of the following informalities:

Claim 1 recites the limitation "the opposite side edges" in line 20.

Claim 1 recites the limitation "the external surface" in line 21.

There is insufficient antecedent basis for these limitations in the claim.

In claim 1, line 2, applicants recite an "absorbent article" after "absorbent article body". From the context of how this second "absorbent article" fits between the topsheet and backsheet, it appears that applicants consider this to be a conventional absorbent core. If this is the case, applicants should relabel this element as an absorbent core to clarify the meaning of the claim.

In claim 1, line 23 includes the following grammatically incorrect limitation: "leg flap absorbent articles which is capable".

Appropriate correction is suggested.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. § 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. § 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. § 103(c) and potential 35 U.S.C. § 102(e), (f) or (g) prior art under 35 U.S.C. § 103(a).

Claims 1-13 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Hayase *et al.* (US 2002/0049421 A1).

Regarding claim 1, Hayase *et al.* teach a disposable diaper (1) comprising a liquid-holding type absorbent article body (10) in which an absorbent article (18) is arranged between a liquid permeable top sheet (2) and a liquid impermeable back sheet (3), in which a pair of right and left leg openings (6) through which the legs pass at least at the time of wearing the

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disposable diaper (1) is formed, and a plurality of leg portion elastic members (61a, 61b) is arranged around the respective leg openings (6) in an extended state, wherein

the leg portion elastic member (61a, 61b) includes at least one first leg portion elastic member (61a) provided in a front side portion (A) which can be applied to the abdomen of a wearer so as to draw an arc along the leg openings (6), and at least one second leg portion elastic member (61b) provided in a back side portion (B) which can be applied to the back of the wearer so as to draw an arc along the leg openings (6), the second leg portion elastic member (61b) being isolated from the first leg portion elastic member (61a) in a crotch portion (C) which can be applied to the crotch of the wearer when worn,

the absorbent article body (10) having a minimum width (W2) in the crotch portion (C), and the opposite side edges in the width direction of the absorbent article body (10) body in the crotch portion (C) bend towards the external surface when worn, so that the respective opposite side edges in the width direction form leg flap absorbent articles which are capable of abutting against the inner part of the thigh of the wearer (see figures 1, 2A and 2B, below).

The leg flap absorbent article as defined herein includes the diaper portions which extend laterally outward from the elastic (61, 61b).

Hayase *et al.* expressly teach the claimed invention except for the specific width of the crotch portion (C).

Mere changes in size alone art not sufficient to patentably distinguish an invention over what is known in the art. *In Gardner v. TEC Systems, Inc.*, 725 F.2d 1338, 220 USPQ 777 (Fed. Cir. 1984), *cert. denied*, 469 U.S. 830, 225 USPQ 232 (1984), the Federal Circuit held that, where the only difference between the prior art and the claims was a recitation of relative

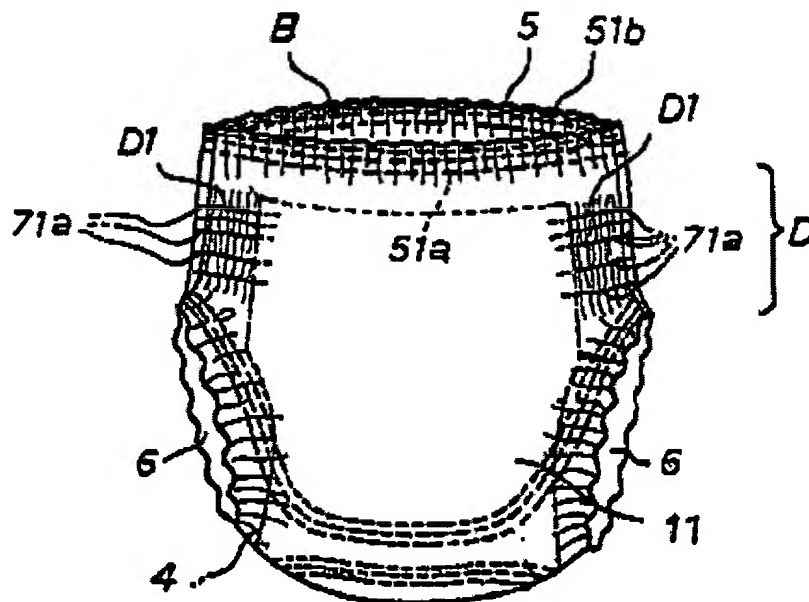
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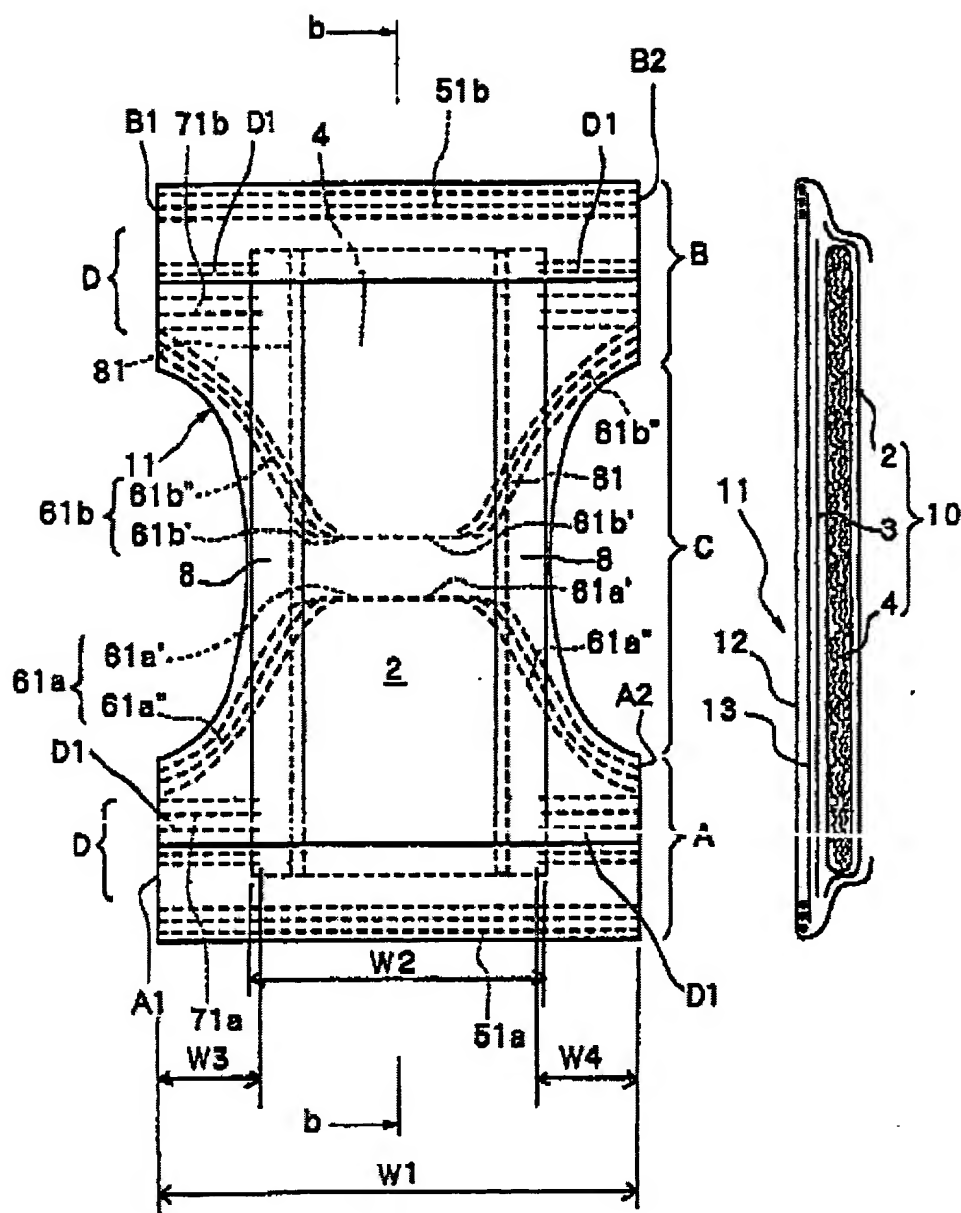
dimensions of the claimed device and a device having the claimed relative dimensions would not perform differently than the prior art device, the claimed device was not patentably distinct from the prior art device. MPEP § 2144.04.

Regarding claim 3, Hayase *et al.* teach a first leg portion elastic member (61a) provided along one of the pair of leg openings (6) and the first leg portion elastic member provided along the other of the pair of leg openings (6) are continuous in the crotch portion (C), and

the second leg portion elastic member provided (61b) along one of the pair of leg openings (6) and the second leg portion elastic member provided (61b) along the other of the pair of leg openings (6) are continuous in the crotch portion (C)(figure 2A).

Regarding claim 4, Hayase *et al.* teach a gap formed between the first leg portion elastic member (61a) and the second leg portion elastic member (61b) in the crotch portion is within the range of from about 1% to 70% of the length in the longitudinal direction of the leg flap absorbent article (fig. 2A).





Regarding claim 5, Hayase *et al.* teach that the length in the longitudinal direction of the leg flap absorbent article is within the range of from about 1/5 to 2/3 of the length in the longitudinal direction of the diaper (1)(fig. 2A).

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Regarding claims 10 and 11, Hayase *et al.* teach bending devices (61a, 61b) which assist bending of the opposite side edges of the absorbent article body (10) toward the external surface when compressed by a wearer's thighs.

Regarding claim 13, Hayase *et al.* teach bending devices (61a, 61b) which are elastic and have low rigidity.

Claims 1, 2, 6, 7, and 9-11 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Sasaki *et al.* (US 2003/0078556 A1).

Regarding claims 1 and 9, Sasaki *et al.* teach a disposable diaper (1A) comprising a liquid-holding type absorbent article body (18) in which an absorbent core (21) is arranged between a liquid permeable top sheet (19) and a liquid impermeable back sheet (20), in which a pair of right and left leg openings (27) through which the legs pass at least at the time of wearing the disposable diaper (1A) is formed, and a plurality of leg portion elastic members (16a, 17a) is arranged around the respective leg openings (27) in an extended state, wherein

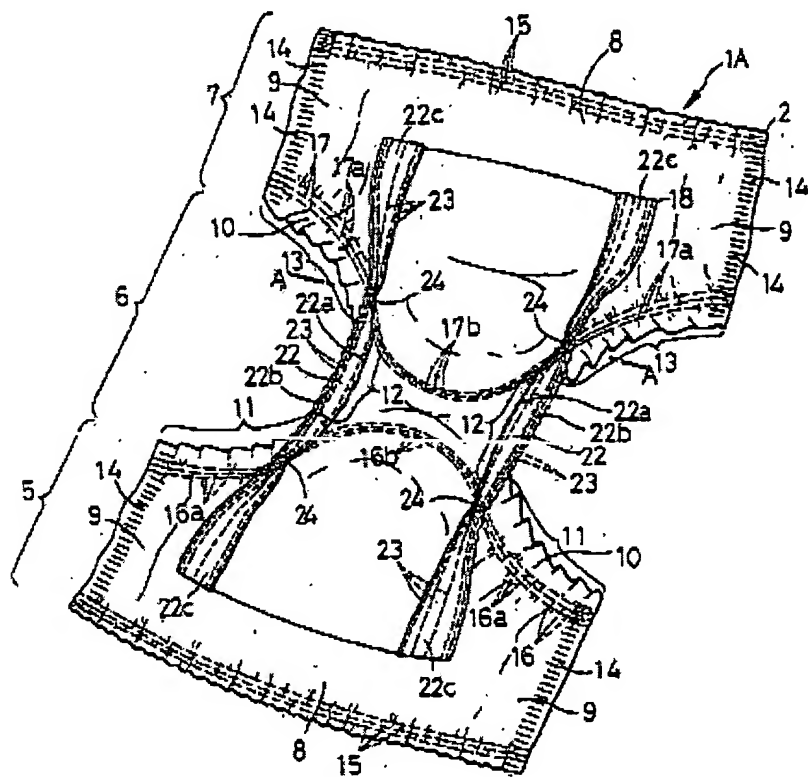
the leg portion elastic member (16a, 17a) includes at least one first leg portion elastic member (16a) provided in a front side portion (5) which can be applied to the abdomen of a wearer so as to draw an arc along the leg openings (27), and at least one second leg portion elastic member (17a) provided in a back side portion (7) which can be applied to the back of the wearer so as to draw an arc along the leg openings (27), the second leg portion elastic member (17a) being isolated from the first leg portion elastic member (16a) in a crotch portion (6) which can be applied to the crotch of the wearer when worn,

the absorbent article body (18) having a minimum width in the crotch portion (6), and the opposite side edges (22) in the width direction of the absorbent article body (18) body in the

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crotch portion (6) bend towards the external surface when worn, so that the respective opposite side edges (22) in the width direction form leg flap absorbent articles which are capable of abutting against the inner part of the thigh of the wearer (see figures 1, 2A and 2B, below).

The leg flap absorbent article as defined herein includes the diaper portions which extend laterally outward from the elastic (16a, 17a)(see figure 3, below).



Sasaki *et al.* expressly teach the claimed invention except for the specific width of the crotch portion (6) and the ratio of length "a" to length "b".

As discussed previously, mere changes in size alone are not sufficient to patentably distinguish an invention over what is known in the art. *In Gardner v. TEC Systems, Inc.*, *supra*.

Regarding claim 2, Sasaki *et al.* teach that the absorbent article body (18) is arranged on one face of an outer layer sheet (2), and the width of the absorbent article body (18) is wider than the width of the outer layer sheet (2) in at least a part of the crotch portion (6)(figure 3).

Regarding claim 6, Sasaki *et al.* teach at least one leg flap elastic member (23) arranged along the longitudinal direction of the leg flap absorbent article on the external surface of the respective leg flap absorbent articles, and the extending stress of the respective leg flap elastic member is smaller than that of the first leg portion elastic member (16a) and the second leg portion elastic member (17a)(¶ 0036).

Regarding claim 7, Sasaki *et al.* teach at least one leg flap side elastic member (23) arranged along the side edge, respectively at the opposite side edges of the absorbent article body (18) in the crotch portion (6), and the extending stress of the respective leg flap side elastic member (23) is smaller than that of the first leg portion elastic member and the second leg portion elastic member (¶ 0036).

Regarding claim 10, Sasaki *et al.* teach bending devices (16a, 17a) which assist bending of the opposite side edges of the absorbent article body (18) toward the external surface when compressed by a wearer's thighs.

Regarding claim 12, Sasaki *et al.* teach the functional equivalent of embosses (19b) applied to the absorbent article body (18), isolated from the outer side edges.

Allowable Subject Matter

Claim 8 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter:

The art of record does not teach or fairly suggest first liquid impermeable guards and liquid permeable side absorbing areas located laterally outside of the guards relative to the longitudinal centerline.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Bogart whose telephone number is (571) 272-4933.

In the event the examiner is not available, the Examiner's supervisor, Tatyana Zalukaeva may be reached at phone number (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300 for formal communications. For informal communications, the direct fax to the Examiner is (571) 273-4933.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-3700.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR

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system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Michael Bogart
4 August 2005

TATYANA ZALUKAEVA
PRIMARY EXAMINER

